

DIEMER & WEI, LLP
Kathryn S. Diemer, SBN 133977
Susan B. Luce, SBN 120843
100 W. San Fernando Street, Suite 555
San Jose, CA 95113
408-971-6270
sluce@diemerwei.com

Attorneys for Loraine Wong,
Kendall Ng and Mark Ng

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

RICHARD TOM, aka Rich Tom,

DEBTOR

LORAIN WONG, KENDALL NG and
MARK NG,

Plaintiffs,

v.

RICHARD TOM,

Defendant.

Case No. 19-31024 HLB

Chapter 7

Adv. Proc. No. :

**COMPLAINT TO DETERMINE DEBTS
TO BE EXCEPTED FROM DISCHARGE
(11 U.S.C. §§ 523(a)(2)(A); 523(a)(6)
and 523(a)(9))**

Judge: Hon. Hannah L. Blumenstiel

1 Plaintiffs, Loraine Wong, Kendall Ng and Mark Ng, bring this adversary complaint
2 pursuant to 11 U.S.C. §§ 523(a)(2)(A), 523(a)(6) and 523(a)(9) to request an order determining
3 that the judgment obtained by Plaintiffs against Defendant Richard Tom and the accompanying
4 debt owed by Richard Tom to Plaintiffs is excepted from discharge.
5

6 7 **JURISDICTION AND VENUE**

- 8 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334, and 11
9 U.S.C. § 523.
10 2. This Adversary Proceeding is a core proceeding pursuant to 28 U.S.C. § 157 (B)(2)(i).
11 3. Venue in the Northern District of California is proper under 28 U.S.C. § 1409(a).
12

13 14 **PARTIES**

- 15 4. Plaintiffs are individuals residing in Santa Clara County, California.
16 5. Plaintiffs are judgment creditors of Debtor/Defendant Richard Tom and have standing to
17 bring this adversary proceeding.
18 6. Plaintiff Loraine Wong is married to Mark Ng and is the mother of Plaintiff Kendall Ng.
19 7. Plaintiff Mark Ng is the husband of Loraine Wong and the father of Plaintiff Kendall Ng.
20 8. Defendant Richard Tom (“Defendant”) is an individual Debtor under Chapter 7 whose
21 petition was filed in the San Francisco Division of the United States Bankruptcy Court for
22 the Northern District of California.
23 9. Defendant is an adult residing in San Francisco County, California.
24
25
26
27
28

GENERAL ALLEGATIONS

10. On the evening of February 19, 2007, Defendant and a friend had dinner and drinks.
11. At approximately 8:20 P.M., Defendant drove on the residential streets of San Carlos where the posted speeds were between 30 and 35 miles per hour.
12. At that time, Defendant was driving on the residential streets at speeds in excess of 85 miles per hour, more than 45 to 50 miles per hour over the posted limits.
13. At that time, Defendant was intoxicated as shown by his blood alcohol level.
14. Defendant was driving more than 51 miles per hour in the residential area when he sped into an intersection where he knew visibility was impaired.
15. Defendant collided with the vehicle driven by Plaintiff Loraine Wong ("Loraine").
16. In the car with Loraine were her two daughters, Sydney Ng ("Sydney") and Plaintiff Kendall Ng ("Kendall").
17. The collision caused the death of Sydney. She was eight years old.
18. Sydney was the daughter of Loraine Wong and Plaintiff Mark Ng ("Mark"). She was Kendall's sister.
19. The collision caused serious physical and emotional injuries to Loraine, Kendall and Mark Ng ("Ngs").
20. On August 3, 2007, Plaintiffs initiated suit against Defendant in the Superior Court of California, County of San Mateo, Case No. CIV 464944. The suit was to recover for the death of Sydney and the injuries incurred by Plaintiffs.
21. The matter was tried before a jury of twelve persons over a period of 19 days.
22. On October 10, 2012, Judgment on Special Verdict ("Judgment") was entered in favor of Plaintiffs Loraine, Kendall and Mark. (Exhibit 1, attached hereto and incorporated herein).

- 1 23. The jury found that Defendant was 100% at fault and that Defendant acted with malice or
2 oppression in causing injury to Loraine, Kendall and Mark.
- 3 24. The jury awarded damages, including punitive damages, to Plaintiffs Loraine, Kendall and
4 Mark in the total amount of \$7,258,000.00.
- 5 25. Defendant had filed a cross action and was awarded nothing.
- 6 26. Defendant appealed to the Court of Appeal of the State of California, First Appellate
7 District, Case No. A137464.
- 8 27. The judgment of the trial court was affirmed by Justice Margulies, Justice Dondero and
9 Presiding Justice Humes. (Exhibit 2, attached hereto and incorporated herein).
- 10 28. The Appellate Court noted,
11
12 *It was not Tom's speed alone that supported a finding of malice, it was*
13 *his decision to use very excessive speed at night, while approaching an*
14 *intersection he knew to have an impaired view, while his judgment was*
15 *impaired by alcohol*
16 (Exhibit 2, page 9).
- 17 29. Plaintiffs renewed their judgment on January 31, 2019. (Exhibit 3, attached hereto and
18 incorporated herein).
- 19 30. At the time of the accident, Defendant owned and controlled interests in real property
20 located at 532-536 Green Street in San Francisco ("Property"). The Property is a five-
21 unit, mixed use building consisting of 4 residential apartments and a ground floor
22 commercial unit.
- 23 31. The Property was Defendant's only major asset which could be used for satisfaction of his
24 debt to Plaintiffs.
- 25 32. On October 9, 2007, two months after Plaintiffs filed the personal injury lawsuit, Green
26 Oasis, LP ("GOLP") was created. Justin Tom, Defendant's son, was the named General
27 partner.
28

- 1 33. By Grant Deed recorded on November 16, 2007, three months after the Plaintiffs filed the
2 personal injury lawsuit, Defendant's son Justin transferred his 50% interest in the Property
3 to GOLP.
4
- 5 34. By the same Grant Deed recorded on November 16, 2007, Defendant, as Trustee of the
6 Trust of Richard Tom dated September 7, 2004, transferred his 50% interest in the
7 Property to GOLP.
8
- 9 35. The members of GOLP were Defendant, Richard Tom, and his son, Justin. Justin Tom
10 was a 1% General partner and 49% Partner of GOLP. Defendant was a 50% partner of
11 GOLP.
12
- 13 36. Defendant, at all times, had control and influence over GOLP's actions and assets.
14
- 15 37. In May of 2010, during the personal injury litigation, Defendant transferred 32% of his
16 50% interest in GOLP to Winnie Jiang, the mother of his son, Garrett. Ms. Jiang lives in
17 the Property. That transfer left Defendant with an 18% interest in GOLP.
18
- 19 38. At a date unknown to Plaintiffs, Defendant transferred 4% of his interest in GOLP to
20 Giovanni Torracca. That transfer left Defendant with a 14% interest in GOLP.
21
- 22 39. On November 21, 2013, approximately a year after the judgment in favor of Plaintiffs in
23 the personal injury suit was entered, and two days after judgment was entered in the
24 fraudulent transfer case, the Defendant transferred his remaining 14% interest in GOLP to
25 God's Grace Irrevocable Trust.
26
- 27 40. Defendant's son, Garrett, is the beneficiary of God's Grace Irrevocable Trust and
28 Defendant, Richard Tom, is its Trustee.
41. On October 26, 2010, Plaintiffs Mark Ng and Loraine Wong had commenced Case No.
CGC-10-504874 in the Superior Court of San Francisco. The Verified Complaint to Set

1 Aside Fraudulent Transfers and for Damages was brought against Debtor/Defendant
2 Richard Tom and the entities and persons to whom he had transferred his assets.

3 42. On November 19, 2013, the San Francisco Superior Court entered Judgment on Special
4 Verdict (Exhibit 4, attached hereto and incorporated herein).

5 43. The Superior Court of San Francisco found that several of the transfers described above
6 were done by Defendant to delay, to hinder, or to defraud the Plaintiffs. The Court found
7 other reasons to make some of the transfers not voidable at that time.

8 44. The Superior Court of San Francisco found that the transfer of Defendant's 32% interest
9 in GOLP was done with the intent to hinder, delay or defraud. However, as it was part of
10 a Family Court decision, the Superior Court did not disturb the decision of the Family
11 Court.

12 45. The Superior Court of San Francisco found that the transfer of Defendant's last 14%
13 interest in GOLP was available for payment towards satisfaction of the judgment arising
14 from the motor vehicle collision as it was proven to be a fraudulent transfer.

15 46. In October of 2015, Metropolitan Bank had the Property appraised. The "As Is" value
16 was \$3,150,000.

17 47. On February 17, 2016, GOLP granted a deed of trust to Metropolitan Bank to secure a
18 Note in the amount of \$900,000.00 by the Property. The deed of trust was signed by
19 Defendant, as manager of Pacific Golden Asia, LLC which was the new General Partner
20 of GOLP. The document was recorded on February 23, 2016.

21 48. Pacific Golden Asia, LLC, which became a General partner for GOLP, was created in
22 2015. On October 9, 2017, its managing member was Kenesha Fudge, Defendant's niece.
23 Defendant is its Agent for Service of Process. Its California address is the Green Street
24 Property.

25
26
27
28

1 49. God's Grace Irrevocable Trust was created by Defendant as a vehicle for the transfer of
2 his remaining interest in GOLP. Defendant is the Trustee and his son Garret is the
3 beneficiary.
4

5
6 **FIRST CLAIM FOR RELIEF**
7 **U.S.C. § 523(a)(2) –Actual Fraud**

8 50. Plaintiffs re-allege and incorporate herein the allegations contained in Paragraphs 1
9 through 49 herein as though fully set forth.

10 51. Pursuant to §523(a)(2)(A), a debtor will not be discharged for debts obtained by actual
11 fraud.

12 52. Actual fraud encompasses the kind of conduct carried on by Defendant, the wrongful,
13 methodical and premeditated transfer of assets by Defendant to hide them from Plaintiffs,
14 his creditors.
15

16 53. Defendant engaged in a scheme to impair and impede Plaintiffs' ability to collect on their
17 judgment.

18 54. After the death of Sydney Ng and after inflicting severe injuries upon her family,
19 Defendant began to rid himself of title to his one major asset, the Green Street Property, in
20 order to put it beyond the reach of Plaintiffs
21

22 55. Defendant intentionally acted to conceal and hinder and defraud Plaintiffs every step of
23 the way in their efforts to collect.

24 56. Defendant used his family members and various entities he controlled as shields and
25 elements in his scheme of to conceal his assets.

26 57. At the time Defendant commenced ridding himself of assets, he knew he was responsible
27 for Sydney's death and Plaintiffs' injuries.
28

- 1 58. Defendant continued transferring assets despite the existence of the personal injury action,
2 the fraudulent conveyance action and the judgments thereon. His contempt of the law was
3 blatant.
- 4 59. Defendant's engaging in the methodical and fraudulent transfer of his property, to
5 Plaintiffs' detriment, constitutes actual fraud.
- 6 60. By Grant Deed recorded on November 16, 2007, Defendant transferred his 50 %
7 ownership of the Green Street Property to GOLP. GOLP was created on October 9, 2007,
8 only three months after Plaintiffs brought their personal injury action against Defendant
9 and eight months after the motor vehicle collision which ended Sydney's life and
10 seriously injured her family.
- 11 61. This transfer was found to have been made to delay, to hinder or to defraud Plaintiffs in
12 connection with the claims arising from the collision. (Exhibit 4, p.2).
- 13 62. Defendant continued his scheme to defraud by the transferring 32% his interest in GOLP
14 to his live-in partner, Winnie Jiang.
- 15 63. Defendant continued the fraudulent scheme by transferring 4% of his interest in GOLP to
16 Giovanni Torracca.
- 17 64. Defendant completed his fraudulent scheme when he transferred the last 14% of his
18 interest in GOLP to God's Grace Irrevocable Trust, the trust he created for his son and for
19 which he is the Trustee.
- 20 65. The San Francisco Superior Court found that the transfer of the 32% interest in GOLP to
21 Winnie Jiang was made with the intent to hinder, delay or defraud Plaintiffs, but as it was
22 ordered by the Family Law Division, it declined to void or alter or vacate the Family Law
23 order (Ex. 4).
- 24
25
26
27
28

- 1 66. The San Francisco Superior Court found that the transfer of the Defendants 14% interest
2 in GOLP to God's Grace Irrevocable Trust was available for payment toward satisfaction
3 of Plaintiffs' debt arising from the death of Sydney Ng and the injuries to her family (Ex.
4 4).
- 5 67. These transfers were fraudulent because they were transferred to entities or persons under
6 Defendant's control, mostly for no consideration.
- 7 68. The transfers caused Defendant to become insolvent as his major asset, valued at over
8 three million dollars in 2015, was no longer available to him to satisfy the seven million
9 dollar judgment against him.
- 10 69. All of the transfers were made when Defendant knew he would be facing legal
11 consequences for the death of Sydney and the injuries to Plaintiffs.
- 12 70. Plaintiffs request the Court adjudge these transfers to violate Section 523(a)(2)(A) of the
13 Bankruptcy Code as actual fraud and, therefore, Defendant's indebtedness to Plaintiffs
14 constitutes a non-dischargeable debt.
15
16
17

18 **SECOND CLAIM FOR RELIEF**
19 **11 U.S.C. § 523(a)(6) – For Willful and Malicious**
20 **Injury Caused by the Debtor**

- 21 71. Plaintiffs re-allege and incorporate herein the allegations contained in Paragraphs 1 – 70
22 as though fully incorporated herein.
- 23 72. Defendant drank with his friend knowing he would be driving home after dinner.
- 24 73. When Defendant drove his motor vehicle excessive speeds, he intended to cause harm.
- 25 74. When Defendant drove at 51 miles per hour (according to his expert at trial) or higher
26 than 67 miles per hour (according to the police evidence) through an intersection in a
27
28

1 residential area where the posted limit was 35 miles per hour, he intended to cause the
2 harm inflicted on Sydney and her family.

3 75. Defendant intentionally drove at high speed through the residential intersection where he
4 knew the visibility was impaired.

5 76. Defendant intentionally drove while under the influence of alcohol.

6 77. In doing so, Defendant had a subjective motive to inflict injury. He believed and knew
7 that injury was substantially certain to happen as a result of his driving after drinking, his
8 excessive speeding and his plowing through an intersection in a residential intersection.

9 78. Defendant's acts of driving at high speed through an intersection which he knew had poor
10 visibility while he was intoxicated were willful and malicious and unlawful.

11 79. Defendant's driving under the influence was wrongful and malicious.

12 80. Defendant's speeding through an intersection in a residential area which he knew had
13 impaired visibility was unlawful.

14 81. Defendant's driving under the influence and speeding through an intersection in a
15 residential area were intentional acts he knew would cause harm to others.

16 82. Defendant's intentional acts necessarily caused the death of Sydney Ng.

17 83. Defendant's intentional acts necessarily caused severe physical and emotional injuries to
18 Loraine and Kendall.

19 84. Defendant's intentional acts necessarily caused the mental anguish and emotional damage
20 suffered by Mark.

21 85. Defendant had no justification or excuse for his actions.

22 86. A jury of twelve people found the Defendant acted with malice or oppression when
23 committing these acts.

1 87. Defendant had no just cause nor just excuse for driving the way he did, especially when he
2 knew he had been drinking. Defendant was substantially certain that injury would result
3 from his acts.

4 88. As a result of Defendants wrongdoing, the Superior Court of California, County of San
5 Mateo, Case No. CIV 464944, awarded to Plaintiffs Loraine Wong, Mark Ng and Kendall
6 Ng:
7

- 8 a. \$8,000.00 in punitive damages.
- 9 b. \$2,500,000.00 for personal injuries, including emotional distress as the result of
10 witnessing the death of Sydney Ng and injury to Kendall Ng.
- 11 c. \$250,000.00 for the loss of his wife's love, companionship, comfort, care,
12 assistance, protection, society and moral support.
- 13 d. \$2,500,000.00 as past non-economic damages for the wrongful death of Sydney
14 Ng.
- 15 e. \$1,500,000.00 as future non-economic damages for the wrongful death of Sydney
16 Ng.
- 17 f. \$1,764.73 for Sydney Ng's funeral and burial expenses.

18 89. As a result of Defendant's intentional, willful and malicious acts, the judgment of the
19 Superior Court of San Mateo should be determined to be non-dischargeable pursuant to 11
20 U.S.C. §523(a)(6).
21
22

23
24
THIRD CLAIM FOR RELIEF

25 **11 U.S.C. § 523(a)(9) – For Death or Personal Injury Caused by the**
26 **Debtor's Operation of a Motor Vehicle while Intoxicated**

27 90. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 – 89 inclusive
28 as though fully set forth.

1 91. The death of Sydney Ng was caused by Defendant's operation of a motor vehicle while
2 under the influence of alcohol and while driving at excessive and dangerous speed.
3 92. The personal injuries incurred by Plaintiffs were all caused by Defendant's operation of a
4 motor vehicle while he was impaired by alcohol and while driving at excessive and
5 dangerous speeds.
6 93. Defendant's blood alcohol level was 0.04% as shown by a blood alcohol test taken three
7 hours after the accident.
8 94. At two hours after the crash, Defendant failed a field sobriety test.
9 95. Defendant was shown to have attempted to cheat a breathalyzer test by covering the
10 device with his tongue and lips and not blowing any air into the device.
11 96. The expert at trial testified that, based upon his alcohol level three hours after the crash,
12 his blood alcohol level at the time of the accident was between 0.09 and .10 percent, over
13 the legal limit.
14 97. The damages were awarded because Defendant operated his motor vehicle while he was
15 intoxicated and under the influence of alcohol.
16 100. Defendant's driving was unlawful and caused the death of Sydney Ng.
17 101. Defendant's unlawful operation of his car while intoxicated caused the physical and
18 emotional damage which continues to be suffered by Plaintiffs Loraine and Kendall and
19 Mark.
20 102. The judgment against Defendant has determined the amount of damages suffered by
21 Plaintiffs. Interest and other costs and fees continue to add to their loss.
22 103. Plaintiffs request this Court find Defendant's unlawful actions to violate Section
23 523(a)(9) of the Bankruptcy Code and, that as a result, Defendant's indebtedness to
24 Plaintiffs is non-dischargeable.
25
26
27
28

1 **PRAYER**

2 WHEREFORE, Plaintiffs respectfully request that this Court find:

3 The debt owed to Plaintiffs by Defendant is non-dischargeable pursuant to 11 U.S.C. §§
4 523 (a)(2)(A), 11 U.S.C. §§ 523 523 (a)(6); and/or 11 U.S.C. §§ 523 (a)(9);
5

6 And for such other relief the Court deems just and proper.
7
8

9 Respectfully submitted,

10 Dated: December 27, 2019

DIEMER & WEI, LLP

11
12 /s/ Susan B. Luce
13 Attorneys for Plaintiffs
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28